UNITED NATIONS **E**

Economic and Social Council

Distr.
GENERAL

E/CN.4/2001/SR.43
17 April 2001

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Fifty-seventh session

SUMMARY RECORD OF THE 43rd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 6 April 2001, at 3 p.m.

Chairperson: Mr. DESPOUY (Argentina)

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD INCLUDING:

(a) QUESTION OF HUMAN RIGHTS IN CYPRUS (continued)

The meeting was called to order at 3.15 p.m.

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION (agenda item 5) (continued) (E/CN.4/2001/L.3, L.4, L.5)

Draft resolution submitted by the Chairman on the question of Western Sahara (E/CN.4/2001/L.3)

1. The draft resolution was adopted.

2. Ms. TAHIR-KHELI (United States of America) said that, although her delegation had joined in the consensus on the draft resolutions, it did not consider that the text set a precedent. The issue should rightfully be discussed by the Security Council.

Draft resolution on the situation in occupied Palestine (E/CN.4/2001/L.4)

3. Mr. ATTAR (Saudi Arabia) introduced the draft resolution saying that it dealt with the humanitarian aspect of the situation and had the potential to promote stability in the region.

4. Mrs. IZE-CHARRIN (Secretary of the Commission) said that the representative of Viet Nam and the observer for Turkey had become sponsors of the draft resolution.

5. Mr. LEVY (Observer for Israel) urged the members of the Commission to consider carefully their vote on self-determination for the Palestinians, which was primarily a political issue to be determined in the context of bilateral negotiations between the parties concerned. His Government supported the principle of self-determination and the right of peoples in every region to govern themselves. More than 20 years previously, in the framework of the Camp David agreements, Israel had recognized the legitimate right and just requirements of the Palestinian people. Through the Oslo process also, Israel and the Palestinians had agreed to recognize their mutual, legitimate political rights, to be achieved within the framework of the peace negotiations.

6. Until recently, the two sides had been negotiating outstanding permanent status issues - including the future status of the disputed territories - but those negotiations had been suspended as a result of the violence which had been initiated by the Palestinians. Negotiations on an end to the violence had commenced that week, and peace talks were bound to resume once the violence ended.

7. The draft resolution before the Commission pre-empted the outcome of the permanent status negotiations and would only undermine attempts to reach a successful conclusion. Furthermore, the language used was more sweeping and definitive than in previous years. The Commission should leave the issue for the parties to resolve, thereby strengthening their incentive to negotiate.

8. Mr. RAMLAWI (Observer for Palestine) said that the draft resolution dealt with the crux of the problem in the Middle East, namely, the right to self-determination of the Palestinian people. That legitimate right was not negotiable since it had been reaffirmed in United Nations resolutions and, moreover, was a prerequisite for peace in the region. The recent negotiations between Palestine and Israel had been about the withdrawal of forces, not self-determination.

9. It was not true that talks had resumed that week. A meeting had been convened on the personal initiative of the Israeli Foreign Minister, at which he had said that he was not authorized by his Government to take any decision. Moreover, the Palestinians leaving the negotiating table had been fired upon by Israeli forces. His delegation urged the Commission to vote in favour of the draft resolution. It was only when the Palestinian people were freed of Israeli occupation that they would be able genuinely to enjoy their rights.

10. Mrs. IZE-CHARRIN (Secretary of the Commission) said that the draft resolution had no financial implications.

11. The CHAIRPERSON said that a roll-call vote had been requested.

12. Mr. ARENALES FORNO (Guatemala), speaking in explanation of vote before the voting, said that his delegation recognized the right of the Palestinians to achieve self-determination through the establishment of their own State or of an autonomous area within Israel. Their enjoyment of that right depended, however, on agreements yet to be concluded with the Israeli Government. It was important that the rights of the Jewish people should not be undermined through increased vulnerability as a result of a massive return of Palestinians. It was only by means of negotiations that a peace agreement could be reached. In voting against the draft resolution, his delegation would not be denying the right of self-determination of the Palestinian people but reaffirming the rights of the Jewish people, which had also been recognized in United Nations resolutions since 1948.

13. Ms. TAHIR-KHELI (United States of America), said that her delegation opposed the draft resolution (as it had similar ones in the past) because the text attempted to prejudge final status issues that the parties had agreed to reserve for bilateral negotiations. Her delegation did not dispute the right of the Commission to address legitimate concerns regarding the human rights practices of any country. Adoption of the draft resolution would not, however, help to break the tragic cycle of violence under way in the region; the parties themselves must do that. Nor would it bring the just, lasting and comprehensive peace that all desired. The road to such peace must begin with the difficult decisions that only the parties could take. The international community should encourage them to do so before further lives were lost.

14. United Nations texts, such as the one before the Commission, risked diminishing the prospects for peace in the Middle East. Repeated year after year, they failed to reflect the complexities of the situation. Nor did they offer a balanced assessment. Moreover, the draft resolution under consideration went beyond the competence of the Commission in concluding that self-determination was "a basic condition" for peace (final preambular paragraph) or that

Palestinians had an "inalienable" right "to establish their sovereign and independent Palestinian State". The issues dividing the Palestinians and Israelis must be resolved between them in the region; they could not be resolved in Geneva.

15. The sine qua non for a "just, lasting and comprehensive peace" was an end to violence and a resumption and completion of negotiations. Peace would require real compromise, which would involve real sacrifices on both sides. The parties themselves would need to take concrete steps and make genuine efforts to fulfil the principle of land for peace embodied in Security Council resolutions 242 and 338. Her delegation urged the Commission to vote against a draft resolution which had the very real potential to undermine the peace process.

16. Mr. DEMBRI (Algeria) said that no vote should be used to deny the Palestinian people their right to determine their own destiny.

17. The CHAIRPERSON said that, under rule 60 of the rules of procedure, a sponsor was not entitled to speak in explanation of vote.

18. At the request of the representative of the United States of America, a vote was taken by roll-call on the draft resolution.

19. Algeria, having been drawn by lot by the Chairperson, was called upon to vote first.

In favour: Algeria, Argentina, Belgium, Brazil, Burundi, Cameroon, China, Colombia, Costa Rica, Cuba, Czech Republic, Democratic Republic of the Congo, Ecuador, France, Germany, India, Indonesia, Italy, Japan, Kenya, Latvia, Libyan Arab Jamahiriya, Madagascar, Malaysia, Mauritius, Mexico, Niger, Nigeria, Norway, Pakistan, Peru, Poland, Portugal, Qatar, Republic of Korea, Russian Federation, Saudi Arabia, Senegal, South Africa, Spain, Swaziland, Syrian Arab Republic, Thailand, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela, Viet Nam, Zambia.

Against: Guatemala, United States of America.

Abstaining: Canada, Romania.

20. The draft resolution was adopted by 48 votes to 2, with 2 abstentions.

21. Ms. GERVAIS-VIDRICAIRE (Canada) said that her delegation fully supported the right of the Palestinians to self-determination, in which the right to the creation of a Palestinian State was implicit. The interest of all peoples in the region, including the Palestinians, would, however, best be served through the negotiating process. Insufficient weight was given to that fact in paragraph 1.

22. Mr. NOIRFALISSE (Belgium), speaking on behalf of the European Union and its associated countries, said that the Union had been able to support the draft resolution the text of which reaffirmed the right of the Palestinian people to self-determination without in any way

prejudicing the negotiations on final status. The right of the Palestinian people to build a sovereign, democratic and viable State had been established; the timing was up to the Palestinian people. As had been stated on 25 March 1999, the creation of a sovereign, democratic, viable Palestinian State on the basis of existing agreements and full negotiations was the best guarantee of Israel's security and the latter's acceptance as an equal partner in the region. The Union continued to urge the parties to meet in a constructive spirit to seek an urgent resumption of their dialogue.

23. It reaffirmed that the basis of negotiations and of a just, lasting and comprehensive peace must be Security Council resolutions 242 (1967) and 338 (1973) and other relevant United Nations resolutions. It reiterated the inadmissibility of the acquisition of territory by war, the right of all States to live in security and to exist within internationally recognized borders and the principle of land for peace.

Draft resolution on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (E/CN.4/2001/L.5)

24. Mr. REYES RODRÍGUEZ (Cuba) introduced the draft resolution which sought to reinforce the Commission's work on the issue in question. Drawing attention to an error in the Spanish version, he said that the word empleo in the title and in paragraphs 12 and 18 should be replaced by the word utilización.

25. Mrs. IZE-CHARRIN (Secretary of the Commission) said that the representatives of Costa Rica, India and the Russian Federation and the observers for the Dominican Republic, El Salvador and Equatorial Guinea had become sponsors of the draft resolution.

26. Mr. ADIYIA (Office of the High Commissioner for Human Rights), outlining the financial implications of the draft resolution, said that the renewal of the mandate of the Special Rapporteur would each year involve three trips to Geneva for consultations and one trip to New York, at an estimated cost of US$ 53,600. Provisions had been included in the Programme Budget for the current biennium 2000-2001 to cover those activities, and an additional US$ 107,200 had been included in the proposed programme budget for the biennium 2002-2003.

27. At the request of the representative of Belgium speaking on behalf of the European Union, a vote was taken by roll-call on the draft resolution.

28. The United Kingdom of Great Britain and Northern Ireland, having been drawn by lot by the Chairperson, was called upon to vote first.

In favour: Algeria, Argentina, Brazil, Burundi, Cameroon, China, Colombia, Costa Rica, Cuba, Democratic Republic of the Congo, Ecuador, Guatemala, India, Indonesia, Kenya, Libyan Arab Jamahiriya, Madagascar, Malaysia, Mauritius, Mexico, Niger, Nigeria, Pakistan, Peru, Qatar, Russian Federation, Senegal, South Africa, Swaziland, Syrian Arab Republic, Thailand, Uruguay, Venezuela, Viet Nam, Zambia.

Against: Belgium, Canada, Czech Republic, Germany, Japan, Latvia, Norway, Poland, Romania, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: France, Italy, Portugal, Republic of Korea, Saudi Arabia, Spain.

29. The draft resolution was adopted by 35 votes to 11, with 6 abstentions.

30. Mr. NOIRFALISSE (Belgium), speaking on behalf of the European Union and its associated countries, said that while the Union shared many of the concerns about the dangers of mercenary activity expressed in the report of the Special Rapporteur and strongly condemned the involvement of mercenaries in terrorist activities, it had been unable to support the draft resolution. It believed that the Commission was not the right forum to deal with issues of mercenary activity.

31. While recognizing the dangers caused by mercenary activity, it doubted that the use of mercenaries should be dealt with primarily as a human rights problem and a threat to the right of peoples to self-determination. It believed that the mandate of the Special Rapporteur on the use of mercenaries should be terminated and that the matter of mercenary activity should be considered directly by the General Assembly. It would continue to participate actively in the appropriate forums in the dialogue on ways to curb the threats posed by such activity.

32. Mr. FERNÁNDEZ-PALACIOS (Cuba), speaking on a point of order, said that it appeared to his delegation that the statements just made by the representative of Belgium were general ones and not explanations of vote. Since only members of the Commission were entitled to vote and thus to explain their votes, he failed to see how an explanation of vote could be given on behalf of a member of the European Union that was not a member of the Commission, still less on behalf of an associated country that was not a member of the Commission.

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:

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(f) STATES OF EMERGENCY

(g) CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

(agenda item 11) (continued) (E/CN.4/2001/4, 9 and Corr.1 and Add.1 and 2, 10, 11, 14 and Add.1, 58, 59 and Corr.1 and Add.1, 60, 61, 63, 64 and Add.1, 65 and Add.1-3, 66 and Add.1, 67, 68, 69 and Add.1, 116, 137 and Corr.1, 138 and 149; E/CN.4/2001/NGO/2, 16, 23, 31, 47, 49, 50, 52, 64-71, 76, 90-94, 98, 99, 101, 110, 115, 116, 132-135, 137 and Corr.1, 138-145, 150, 159, 167, 168, 181 and 182; A/55/178 and 280 and Add.1-2; A/RES.55/89)

33. Mr. SAMOURA (African Commission of Health and Human Rights Promoters) said that the non-governmental organizations (NGOs) of the South were appalled at the human rights violations which NGOs of the North had reported to the Commission.

34. His organization worked to assist victims of torture and had also begun to take preventive action. It had developed a training programme in humanitarian law and human rights designed for army and security forces personnel since they could do the greatest harm if they did not respect human rights. The programme would provide training in basic human rights instruments, including the Universal Declaration of Human Rights and the African Charter of Human and Peoples' Rights, for personnel at all levels and would begin as a pilot project in Mali; it would subsequently be extended to other African countries including Guinea, Sierra Leone and Liberia.

35. His organization had contacted several Governments in the North in an effort to interest them in a partnership but thus far had not received any practical support. He would be happy to provide an outline of the project to members of the Commission and to NGOs of the North so that they could translate their concerns into practical support.

36. Finally, he stressed the need to reform the human rights protection mechanisms, particularly the special rapporteurs. It was essential that there should be no doubt as to the independence of the special rapporteurs. The selective nature of those mechanisms, when seen from the field, appeared to be an attempt to destabilize certain countries of the South.

37. Mr. ESHAGHI (New Human Rights) informed the Commission that Ayatollah Montazeri, once regarded as the designated successor to Ayatollah Khomeini, had just published his memoirs in which he gave details about a wave of summary executions of some 30,000 political prisoners, which had been carried out between August 1988 and March 1989. The victims had been members or supporters of the People's Mojahedin.

38. The book contained extracts from correspondence between Khomeini and the judicial authorities which showed that Khomeini had personally ordered the massacre and that all the leaders of the mullah regime, including those who currently held key positions, had been directly involved. It was a perfect example of a crime against humanity. In that connection he cited article 6 (c) of the charter of the International Military Tribunal of Nürnberg, which defined crimes against humanity as "murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population ... on political, racial or religious grounds" whether or not "in violation of the domestic law of the country where perpetrated".

39. He therefore called on the Commission to invite the Special Representative on the situation of human rights in the Islamic Republic of Iran to examine the matter and report back to the Commission at its next session. Since the persons responsible for that crime were still in power, the international community should establish an international tribunal to prosecute all those responsible for the massacre.

40. Mr. BENNET (Afro-Asian People's Solidarity) said that, without freedom of expression and its associated right of free choice, civil and political rights would have no meaning. Enlightened nations took freedom of expression for granted because they recognized it was a requirement for the functioning of a healthy polity. Unfortunately, freedom of expression was under threat from a wide array of forces. Terrorist groups denied that freedom inter alia by attacking the media. When those using terror as an instrument of policy cited God's name to justify their actions, the situation became even worse.

41. While abuse of free expression did take place, the maturity of a society could be measured by its citizens' ability to see and hear all and then sift through to separate the good from the bad.

42. Ms. PARDO (Franciscans International) said that impunity undermined a society and encouraged violators of human rights to repeat their crimes. Paramilitary groups contributed to impunity because they shielded the true authors of the crimes and concealed the responsibility of the State's security forces. The Ombudsman of Colombia had stated that paramilitary groups did the dirty work that the police and armed forces could not do because they were supposed to uphold the law. A prime ingredient of impunity was the fact that those who committed human rights violations were tried by military courts, often with the collaboration of the civilian authorities which transferred such cases to those courts.

43. Citing an incident in which the air force had bombed a village killing 17 people, she said that even though, according to international norms, investigations into human rights violations were supposed to be conducted by the regular authorities, the case was currently before a military court. Most serious human rights violations in Colombia were tried in military courts which systematically refused to punish military personnel for such violations.

44. Accordingly, she called on the Commission to appoint a special rapporteur for Colombia to investigate and make recommendations on the situation of impunity in Colombia and its adverse consequences for human rights in that country. She also asked that the authors of serious human rights violations be tried by an international body.

45. Mr. WATCHMAN (International Indian Treaty Council) said that, like all indigenous communities in the United States of America, his own people had been subjected to confiscation of their livestock, to rules preventing them from building or maintaining homes, to continuous police harassment, to harsh restrictions on religion and to the threat of forcible eviction from their traditional lands. The United States Government was deliberately destroying the families, livelihood, sacred places and ways of life of indigenous communities, which were forcibly relocated because companies wanted their land. Repeated representations had failed to change the Government's course of action.

46. His organization would work with the Sub-Commission on the Promotion and Protection of Human Rights and its Working Group on Indigenous Populations to develop a resolution, which should provide for full-time monitoring of human rights violations in the Dine Country, make provision for giving the United States of America advice and guidance regarding its responsibilities under existing treaties and international instruments; and provide an international tribunal before which the United States of America and its officials could be held accountable for their actions.

47. Lastly, he expressed the regret of indigenous peoples throughout the world that executive clemency had been denied to the indigenous and environmental rights defender, Mr. Leonard Peltier; his organization renewed its call for Mr. Peltier's immediate release. It urged the Commission to request the Special Rapporteur on the independence of judges and lawyers and the Working Group on Arbitrary Detention to visit and investigate the situation of Mr. Peltier, and report to the Commission at its fifty-eighth session.

48. Mr. YASIN (World Muslim Congress) said that torture and other cruel, inhuman or degrading treatment or punishment were favoured methods used by States that had forcibly occupied territories and were holding the people of such territories against their will. Torture by Indian State agencies in occupied Jammu and Kashmir was widespread and practised as part of a deliberate campaign of repression to force the Kashmiri people into submission.

49. The Department of State of the United States, in its country report on Indian human rights practices for the year 2000, stated that the Indian army continued to conduct cordon-and-search operations in Muslim neighbourhoods and villages in Jammu and Kashmir, detaining young men, assaulting family members and summarily executing suspected militants. The report noted that methods of torture included beating, rape, crushing leg muscles with wooden rollers, burning and electric shocks. Amnesty International had reported that torture was widely used and had led to dozens of deaths in custody. The Commission must act to put an end to such inhuman practices and hold those committing them, and the States that sanctioned them, accountable for their actions.

50. Ms. MOFDH SIDI (International Youth and Student Movement for the United Nations) said that, following its invasion of Western Sahara in 1975, Morocco had built a system of electronic walls, the longest of which was 2,500 kilometres, equipped with radar, barbed wire and anti-personnel and anti-tank mines. The landmines represented a great danger to the local population, especially as there were no medical facilities in the area. The Moroccan Government was defending its own economic interests in Western Sahara, without any concern for the fate of the indigenous population or its animals.

51. The Moroccan authorities had repeatedly refused to allow access by international organizations to the occupied areas, so it had not been possible to alert the local population to the danger of landmines, or to carry out any demining projects. Her organization called on the Commission to conduct a study of the effects of the electronic walls on the Saharan population, the environment and animals. It also called on the Moroccan authorities to take account of the problem and to permit the Saharans to move about freely without danger of mutilation or death.

52. Mr. LABRADA ROSABAL (Centro de Estudios Sobre la Juventud) said that, in its campaigns of slanders against the Cuban revolution, the United States of America described Cuba as the only non-democratic country in the Western hemisphere. It tried to create the image of an opposition which was persecuted and repressed by the Cuban revolution, thereby seeking to confuse people in Latin America who remembered their own experience of military regimes. Washington concealed the fact that, since 1959, it had itself been creating, organizing, training and financing a so-called Cuban opposition both inside and outside Cuba.

53. Instead of accusing Cuba, the United States should address the fact that most of its population did not exercise electoral rights. More than 7 million adult foreign residents legally in the country had no political rights because they were not United States citizens; some 70 million, two thirds of whom belonged to low-income families and represented 40 per cent of the electorate, were not on the electoral register; those who were registered turned out at the polls in smaller and smaller numbers. Although very few voted, very large sums were spent on election campaigns.

54. Cuban youth, on the other hand, enjoyed full civil and political rights, which included the universal, independent and free electoral registration of all citizens over the age of 16. Although Cuba's democratic system was not perfect, it had not been imported.

55. Ms. MANDELA (Women's International League for Peace and Freedom) said that killings committed in the name of so-called "honour" constituted one of the worst forms of extrajudicial execution and could not be justified by citing cultural idiosyncrasies or using religious interpretations. She called upon the Commission to request the Sub-Commission to prepare a working paper on the incidence of "honour" killing of women, analysing the obligations of States and describing the impact of such crimes on the human rights of women.

56. When a woman was pressured to kill herself in order to cleanse the family's "honour", she was faced with either being killed by a close relative, often a minor, or taking her own life. She sometimes "chose" suicide out of concern for the selected perpetrator, his potential prison sentence and the family's "honour". Naming such deaths as "suicides" concealed the real power relation and was further evidence of men's control over women. She urged the Commission to request the Special Rapporteur on extrajudicial, summary or arbitrary executions to investigate "forced suicide" and address it in her next report.

57. Women sometimes fled their countries under threat of being killed or forced to kill themselves, and in such cases they should qualify for refugee status. The Commission should urge the Member States to accept that form of persecution as a valid basis for the granting of refugee status to women who made such appeals.

58. The use of the term "domestic" violence to describe marital rape minimized the seriousness of the crime and advanced a purported justification therefor. Her organization disagreed with those who refused to classify such violence as torture and as violation of a woman's human rights. It met the definition of torture as defined in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

59. States parties had an obligation to prevent cases of torture and to prosecute the perpetrators when cases did occur. When they failed to arrest and prosecute perpetrators or failed to sentence those convicted, States failed in their obligation. They could not legitimately claim that they had no influence in the "domestic" sphere. In choosing not to "interfere" in such cases States effectively abrogated their responsibility to protect women and to prevent torture. Her organization asked the Commission to direct the Special Rapporteur on the question of torture to study and report on States' policies on "domestic" violence.

60. Ms. CAO Shengjie (All-China Women's Federation) said that Western charges that there was religious intolerance in China were unfair. She was an ordained pastor and Vice-President of the National Young Women's Christian Association of China, and could state that all religions in China had made great strides in the past 20 years. The Chinese Government might not have implemented its policy of religious freedom perfectly, but the social atmosphere in China was favourable to the growth of religions. Nevertheless, the social system was different from that in the West, and religious believers were a minority of the Chinese population.

61. The great majority of cases where the West attacked China's "religious intolerance" were really irregularities, such as when churches and temples were built on land where legal permission had not been granted or when foreigners had arrived in China to teach religious programmes without the permission of the Chinese authorities or without invitations by the relevant religious organizations. Occasional examples of local officials not dealing with religious issues properly should not be distorted or used to negate the overall progress of religious freedom.

62. Falun Gong was not a religion, but an evil cult which distorted religious notions and terms in order to fabricate its fallacies. The main reason for banning it was its harmful social effect, and the decision to outlaw it had been taken on the basis of protecting people from its harm and guaranteeing religious freedom. The ban was not a violation of human rights but an attempt to maximize the protection of human rights.

63. Mr. SHENG Hui (United Nations Association of China) said that the harmonious coexistence of religions had entered a new phase in contemporary China, but there were evil cults which stole religious terms and notions in order to fight against religion in the name of religion, to cheat followers, to take over their property and to hurt their lives. Falun Gong was such a cult, like the "Branch Davidians" in the United States of America, "Aum Shinrikyo" in Japan and the "Movement for the Restoration of the Ten Commandments of God" in Uganda, and had caused the deaths of more than 1,000 people. It was a dark force which damaged religious freedom and human rights.

64. As Vice-Chairman of the China Buddhist Association, he joined the more than one hundred million Chinese religious believers who mourned the tragedy caused by Falun Gong.

65. Mr. SUN Zhonghua (China Disabled Persons' Federation) said that the aim of his organization was to promote and protect the rights of persons with disabilities so as to enable them to participate in society and enjoy equal status and opportunities. To that end, it had participated in the formulation and in the monitoring of legislation relating to persons with

disabilities and had mobilized the media to raise public awareness regarding the rights and abilities of the disabled and to eliminate discrimination against them. While much progress had been made, much remained to be done. The disabilities rights movement was hampered by the current level of social and economic development; in inland areas, many people with disabilities still suffered from poverty.

66. Mr. YOU Xueyun (China Society for Human Rights Studies) said that China, which had signed the International Covenant on Civil and Political Rights and ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, had revised its Criminal Law and Criminal Procedure Law and formulated the People's Police Law, Public Procurators Law, Judges Law, Prison Law, Administrative Procedure Law and State Compensation Law, which together were designed to prevent arbitrary detention or arrest and torture, although there was much room for improvement in their implementation.

67. Public security organs had the authority to detain a person but he could appeal against the detention to the procuratorial organs. If the latter did not approve the arrest, the public security organ had to release the detainee. Within 24 hours of the arrest, a person's family or unit had to be informed of the reasons and the place of custody. The use of torture, threats, enticement or deceit was prohibited.

68. Prison Law stated that prisoners enjoyed the right of immunity from insult to their dignity, corporal punishment and infringement of their personal security. They also enjoyed the rights of defence, appeal, complaint and accusation, the right to communicate with and meet family members and the right to education, rest, remuneration for work and medical treatment. In prison, punishment was combined with reform and education through labour. Those who had completed their sentence enjoyed equal rights with other citizens.

69. Under the Administrative Procedure Law, legal proceedings could be started against administrative or judicial organs and their staff if legal rights or interests were infringed. Those who had suffered losses as a result of such infringement had the right to compensation, while, those infringing such rights were punished. In 2000, the people's courts had heard 2,447 State compensation cases and over 86,000 administrative cases, of which citizens had won more than 13,000.

70. It was regrettable that the United States, which made unwarranted attacks on other countries' human rights violations, kept silent about its own abuses, including torture by the police and ill-treatment of prisoners. Police officers who violated the law were seldom punished and victims seeking redress faced numerous obstacles.

71. Sir Nigel RODLEY (Special Rapporteur on the question of torture) said that he would respond neither to positive comments on his report (E/CN.4/2001/66 and Add.1-2) nor to most of the specific criticisms, many of which were perfectly legitimate observations. There was one criticism, however, that merited a response. The observer for Egypt had accused him of bias in [illegible] had cited comments made by the Committee against Torture in 1996 but had ignored its most recent findings, in 1999. The fact was that, in the 1996 report, the Committee had, after an extensive study in accordance with its special procedure under article 20 of the Convention, and despite a consistent refusal of access to the country, described torture in Egypt as systematic.

The more recent statement, in the Committee's conclusions and recommendations following Egypt's third periodic report, expressed concern about the large number of allegations of torture or even death relating to detainees. That statement in no way altered its earlier finding. In short reviews of periodic reports, the Committee routinely refrained from making judgements on systematicity. The information he had received did not suggest, however, that the use of the adjective in question was currently less appropriate.

72. Several delegations had criticized the fact that he had not sought at an earlier stage to visit the occupied Arab territories in conformity with resolution S-5/1. Far from having taken the position that there was no torture in Israel, he had dealt with and acted on cases in that country on a sustained basis in all his annual reports, including the latest one. In relation to the current renewed intifada, however, he had not received written allegations that would be sufficient for a mission consistent with the standard methodology he had consistently applied to his mandate. Such written allegations had since reached him, and he would act on them.

73. Throughout his mandate, he had scrupulously sought to apply consistent criteria in all his activities, in the belief that in so doing he strengthened the Commission's human rights protection process. He was confident that the Commission would support the application of objective standards and methods.

74. Mr. FERNÁNDEZ-PALACIOS (Cuba), said that he had expected to hear from the Special Rapporteur an acknowledgement of the mistake he had made. Instead, the Commission had been treated to specious justifications. Its questions had not been answered. There was no explanation, for instance of the six-month delay in requesting permission to visit the territories, despite the express mandate given by the Commission, to which the Special Rapporteur reported. There had been massive human rights violations in the occupied territories, including torture and summary executions, yet the Special Rapporteur had taken no action.

Statements in exercise of the right of reply

75. Mr. CHATTY (Observer for Tunisia) said that certain NGOs had passed on a number of unfounded allegations peddled by people who had become specialists in disinformation. The situation should therefore be clarified. Prison conditions in his country were governed by the provisions of Decree No. 88/1276 of 4 November 1988. Inmates were divided up according to sex, age, the nature of the offence and whether the person had been convicted or was in pre-trial detention, or was a first offender or a recidivist. Prison warders committed themselves, when entering upon their duties, to respect the law and guarantee the dignity of the individual. Any officials who, in the exercise of their function, infringed the rights of individuals were subject to both disciplinary action and prosecution. The allegations of impunity were therefore unfounded.

76. Institutional mechanisms had also been developed to prevent such situations. Since 1992, the Chairman of the High Committee for Human Rights and Fundamental Freedoms had been empowered to pay unannounced visits to prisons, detention centres and observation centres for juvenile offenders, in order to ensure that the law and regulations relating to detention were being respected. He then reported on the subject to the President of the Republic.

77. Moreover, in the interests of the constant expansion of human rights, it had been decided in 2000 to transfer responsibility for penal establishments from the Ministry of the Interior to the Ministry of Justice. Machinery had also been put in place to compensate any person held in pre-trial detention whose guilt had not been subsequently established. His Government, which attached great importance to the promotion and protection of human rights in their broadest sense, was determined to maintain its commitment to upholding those rights. It was always open to dialogue, although it noted that some NGOs persisted in an aggressive and counter-productive approach.

78. Ms. DIALLO (Senegal) said that the representative of the International Federation of Human Rights Leagues had spoken in unacceptable terms about the case of a Hissené Habré. Mr. Habré, who was in Senegal as a refugee, had been arrested and charged on 3 February 2000. He had been released, however, and the prosecution had not been pursued because it was found that the Senegalese courts were not competent to deal with the matter. The acts with which Mr. Habré was charged had been committed abroad and article 669 of the Senegalese Criminal Code did not apply when an act was committed by a foreigner abroad, except where certain conditions were fulfilled. In the case in question, none of those conditions was fulfilled.

79. The NGO representative had also cited the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment which her Government had ratified in 1996. The case in question did not, however, fall under article 5, paragraph 1, of that Convention. The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, also mentioned by the NGO representative, was inapplicable to Senegal, which had not ratified it. The Indictment Division had withdrawn the prosecution on the basis of articles 155 and 199 of the Criminal Procedure Code according to which the national courts were not competent. That judgement had been confirmed by the Court of Cassation.

80. The strictures by the NGO in question suffered from the very lack of justice that it laid at the door of her country. Senegal was a State governed by the rule of law, committed to human rights, in which the separation of powers and the independence of the judiciary were realities. The ruling by the Court of Cassation had been attacked only by certain NGOs which had hoped to make the Habré case the African equivalent of the Pinochet case.

81. Mr. MOHAMMED (Observer for Iraq) said that allegations made by an organization which enjoyed foreign support that his Government maltreated Shiites and Kurds were groundless. The freedom of all groups in Iraq to practice their religions was assured.

82. Ms. KASYANJA (Observer for the United Republic of Tanzania) said, with regard to the criticism by an NGO of the Tanzanian police for having resorted to force in Zanzibar Island during an illegal demonstration by an opposition party on 27 January 2001, that her Government fully respected human rights and regretted the 23 deaths and the injuries that had occurred on that day. Many of those killed, however, had been armed and had not been demonstrating peacefully. They had wanted to capture police stations and steal weapons. Some had brutally decapitated a policeman with a machete, while others had been responsible for violent acts, including bombings and killings, in previous weeks. Moreover, they had refused to heed the

police order not to stage the demonstration. It was only when the police had been exhausted with the usual practice of using tear gas and rubber bullets that they had resorted to live ammunition to prevent a greater loss of life. If the arms from the police stations had fallen into the demonstrators' hands, more deaths would have occurred.

83. Mr. BENJELLOUN-TOUIMI (Observer for Morocco) said that the International Youth and Student Movement for the United Nations had come up with a fantastic story about the situation in the Sahara and its evolution. He recommended a careful reading of the Landmine Monitor report for 2000 and the Secretary-General's report (S/2001/148) which demonstrated the progress made in the mine clearance programme and the exchange of information with the United Nations Mission for the Referendum in Western Sahara (MINURSO). They showed that Morocco had made every effort to achieve the necessary security for the local population. Landmines had been cleared systematically, particularly those scattered at random by the enemy. Those planted by the Moroccan army had been recovered or destroyed. The population had been made fully aware of the danger.

84. His Government had signed Revised Protocol II of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, which it would soon ratify. It also fully supported the aims and purposes of the Ottawa Convention.

85. Mr. SAHRAOUI (Algeria) expressed disbelief that the Special Rapporteur on the question of torture had failed to visit the occupied Arab territories on the grounds that he had received no allegations of torture. He needed to look no further than paragraphs 645-665 of his own report (E/CN.4/2001/66) to discover otherwise.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, INCLUDING:

(a) QUESTION OF HUMAN RIGHTS IN CYPRUS (agenda item 9) (continued)

Situation of human rights in Myanmar

86. Mr. PINHEIRO (Special Rapporteur on the situation of human rights in Myanmar) said that he would report in an independent, objective, fair and transparent way on the situation of human rights in Myanmar, offering his voice to the people and civil society of Myanmar to present their allegations to the Government and seek redress for violations.

87. Since his appointment on 28 December 2000, he had paid three visits to Geneva, one to New York and one each to Japan, Malaysia and Thailand. He had spent three days in Myanmar, where his aim had been to establish channels of communication and build mutual trust with the Government. Those terms of reference, which had intentionally been limited, had been fully accomplished. He had met Secretary (1) of the State Peace and Development Council, the Ministers of Foreign Affairs, Home Affairs and Labour and other senior officials. He had also met representatives of the political opposition, both Daw Aung San Suu Kyi and the Secretary-General of the National League for Democracy and other senior officials.

88. His meetings had taken place against the background of the recent news that a dialogue between the Government and Daw Aung San Suu Kyi had started. No official statement had yet been made by either party, but he had received numerous indications from human rights observers, ethnic groups and civil society organizations of considerable hopes that the dialogue would open the door to a free, democratic and peaceful Myanmar.

89. In the country, he had met representatives of ethnic and religious communities, the diplomatic and business community and representatives of the United Nations and other international organizations. In Japan, Malaysia and Thailand, he had held fruitful discussions to gain a better understanding of the views of the authorities in those countries concerning the situation in Myanmar.

90. He had not yet had the opportunity to make a first-hand and objective analysis of the human rights situation in Myanmar but he was confident that a suitable opportunity would arise in the near future. He noted that, according to reliable sources, there had been some improvement in some areas, and that there were several signs that the human rights situation was evolving. The Government had recently shown its willingness to engage with the United Nations and the international community by entering into a dialogue with the Commission and by its continued cooperation with the Special Representative of the Secretary-General.

91. He noted with satisfaction that the Government had established a 20-member Human Rights Committee in April 2000. The Committee had eight working groups, dealing with issues ranging from international human rights law to health, education and labour. He had met the Committee and held a brief exchange of views on the human rights situation. He was encouraged by the resumption of a dialogue between the International Labour Organization (ILO) and the Government of Myanmar on the subject of forced labour.

92. The best hope for administrative reform in Myanmar was a mixture of long-term strategies and such immediate measures as the granting of freedom of expression and assembly, the early release of political prisoners, the liberalization of the media, the strengthening of civil society and the right to participate in public life. All those initiatives would contribute to the process of confidence-building, as he had conveyed to the Government.

93. Some pressing social needs could not continue to be neglected. The Government should create a situation in which international assistance could be given that would effectively reach the most vulnerable sections of the population, such as children, persons affected by HIV/AIDS and the poor. The international community should react positively to any indicators of real progress towards democratization. The isolation of Myanmar should not continue to be deepened. Ways must be found to increase the country's integration into the international community in the interests of human rights.

The meeting rose at 6.20 p.m.